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MAY 24 2007

OFFICE OF PETITIONS

In re Application of :
Johnson, et al. :
Application No. 09/550,219 :
Filed: April 17, 2000 :
Attorney Docket No. IBMN.009US01 (0519) :
For: METHOD AND APPARATUS FOR :
PROCESSING PRINT JOBS VIA :
PARALLEL SPOOLING AND :
DESPOOLING OPERATIONS :

ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.181, to withdraw the holding of abandonment in the above-identified application, and in the alternative, the petition to revive the above-identified application under the unavoidable delay standard of 37 CFR 1.137(a) and the petition to revive the above-identified application under the unintentional delay standard under 37 CFR 1.137(b). In addition, petitioners request a refund of all petition fees required. The request for refund will be treated under 37 CFR 1.181. All petitions were filed on May 2, 2007 (certificate of mailing date April 30, 2007).

The reconsideration petition under 37 CFR 1.181 to withdraw the holding of abandonment is **dismissed**.

The petition under 37 CFR 1.137(a) is **granted**.

The petition under 37 CFR 1.137(b) is **dismissed as moot**.

The petition under 37 CFR 1.181 for refund is **dismissed**.

The above-identified application became abandoned for failure to properly reply to the September 6, 2005 final Office action, which set a three month extendable period for reply. Applicants filed an amendment after final on December 12, 2005 (certificate of mailing date December 6, 2005). The amendment after final failed to place the application in *prima facie* condition for allowance, as was explained in the March 16, 2006 Advisory action. Therefore, the Office contends the application became abandoned on December 7, 2005. A Notice of Abandonment was mailed on April 18, 2006.

Petitioners assert that the application is not abandoned because the Summary Sheet PTOL-326 indicates that the September 6, 2005 Office action was non-final. However, it is noted that the final page of the Office action states that the Office action was final. Petitioners argue that the Office action did not clearly state that the rejections were final and therefore, the holding of abandonment should be withdrawn.

It is noted that the Summary Sheet PTOL-326 found in Office records shows that the non-final box is marked with a typewritten "X" and the final box is marked with a handwritten "X". Petitioners have shown that their copy of the Summary Sheet PTOL-326 indicates that the Office action was non-final.

Nevertheless, the final page of the Office action on both the Office's and petitioners' copy states "THIS ACTION IS MADE FINAL." The application became abandoned for failure to file a proper reply to the final Office action. The reconsideration petition under 37 CFR 1.181 is dismissed.


Based on the facts and circumstances of this case, the petition under 37 CFR 1.137(a) is granted. The \$500.00 petition fee will be charged to deposit account no. 50-3669.

Regarding petitioners' concurrently filed REQUEST FOR REFUND ACCORDING TO 37 CFR 1.26, the payment of the petition fee is a prerequisite to the filing of a petition to revive under 37 CFR 1.137(b). This requirement cannot be waived. MPEP 711.03(c)(III)(B). The Office will not refund the petition fee required by 37 CFR 1.17(l) or 1.17(m).

Deposit account no. 50-3669 will be credited the second RCE fee charged on accounting date May 2, 2007 and the \$130.00 terminal disclaimer fee, as a terminal disclaimer is unnecessary.

After the mailing of this decision, the application file will be returned to Technology Center A.U. 2622 for consideration of the RCE and amendment filed on April 4, 2006 (certificate of mailing date March 30, 2006).

Telephone inquiries pertaining to this decision may be directed to the undersigned at (571) 272-3230.


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Office of Petitions